



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/169234

PRELIMINARY RECITALS

Pursuant to a petition filed October 07, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a hearing was held on October 29, 2015, at Racine, Wisconsin.

The issue for determination is whether the agency correctly discontinued the petitioner's life line services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Janessa Cannon
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Racine County. The petitioner is enrolled in the Family Care Program. Her services are provided by Community Care Inc. (CCI).
2. The petitioner is soon to be 85 years old. Her current active problems include: arthritis, counteracts, chronic pain, Type 2 Diabetes, history of right fibula fracture, history of recurrent Urinary Tract Infections (UTIs), hyperlipidemia/hypercholesterolemia, hypertension, hypothyroidism, morbid obesity, and neuropathy. She is non-ambulatory with incontinence issues and a history of skin break down. She needs assistance with all of her Activities of Daily

Living. Despite the petitioner's persistent physical issues, she has a good memory, and she is mentally very capable.

3. On August 13, 2015 CCI conducted a Family Care periodic review. During their review, the team noticed that the petitioner had access to several phones. The team spoke to the petitioner, and informed her that they would be terminating her lifeline service. The team reasoned that the petitioner was no longer ambulatory, and that falls were not a problem. They noted that wherever the petitioner would be in her home, she would have access to a phone. The petitioner explained that she disagreed with the decision because she could drop her phone or have another issue where she could not use a phone. She felt that lifeline was an important service for her safety.
4. The petitioner used lifeline services on January 14, 2015, June 12, 2015, and April 2, 2015.
5. On August 26, 2015 the agency sent the petitioner a notice stating that effective September 10, 2015 they were terminating her Personal Emergency Response System (Lifeline) service.
6. On October 7, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

The Managed Care Organization (MCO) must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code, §DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client's long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the MCO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Admin. Code, §DHS 10.44(1)(f); DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Admin. Code, §DHS 10.44(j)(5). Wis. Stat., §46.287(2)(a)1 provides that a person may request a fair hearing to contest a list of negative actions under the FCP program directly to the Division of Hearings and Appeals.

During a periodic review, CCI determined that lifeline was no longer a cost-effective and reasonable service given the petitioner's current conditions and limitations. They reasoned that the petitioner's condition had deteriorated to the point where she was no longer ambulatory. With no ambulation, there was no risk for falls, and lifeline was not necessary.

The petitioner highlighted that since she has become non-ambulatory she has relied on and used lifeline. Lifeline is different from simply calling 911. When she uses lifeline, the rescue personnel have additional information readily available to them. If she were to simply call 911, the operator would ask her a series of questions that she may not be able to answer given her health state at that moment. She also argues that she could drop the phone. Calling 911 is more rigorous than simply pushing a button. She would have to dial three specific numbers in the correct sequence. Generally the petitioner is capable of this, however, if she is suffering from acute problems caused by her diabetes; this may not be possible for her.

There was no evidence of the cost of this service. A basic internet search showed that lifeline cost \$32.00 in Columbia County. Another search showed that the high end of the lifeline service is \$45 per month. I understand the agency's argument that if there is a free alternative, then it is not a cost effective service. However, I do not believe that 911 is a viable alternative. I also do not buy the agency's argument that the petitioner does not need this service because her condition has worsened. If the petitioner's condition

has worsened, the risk for an acute situation where this service would be necessary has also increased. Given the petitioner's health issues, the fact that she has had to use this service, and what this service offers above and beyond calling 911 that it is a necessary and cost effective service for the petitioner.

CONCLUSIONS OF LAW

The agency incorrectly discontinued the petitioner's life line services.

THEREFORE, it is

ORDERED

That this case is remanded to the agency with instructions not to terminate the petitioner's lifeline service. The agency shall comply with this order within 10 days from the date of decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 25th day of November, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 25, 2015.

Community Care Inc.
Office of Family Care Expansion
Health Care Access and Accountability